

REMARKS

Claims 37-44 and 82-84 have been allowed.

35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (emphasis added).

Claims 45-49

Amended claim 45 claims "[a]n anastomosis applicator for deploying a one-piece anastomosis device to connect a graft vessel to a target vessel, the applicator comprising: a first tube configured to receive a the one-piece anastomosis device; and a second tube concentric with said first tube, wherein at least one of said first and second tubes is movable with respect to the other said tube to apply torque to the anastomosis device."

In contrast, U.S. Pat. No. 5,234,447 to Kaster instead discloses moving a sleeve 13 "forwardly" to "cause the anvil disposed on its forward end to contact the plurality of exterior wall engagement member (44) and thereby urge them forward into a piercing and engaging orientation." (column 7, lines 2-7; Figure 19). Nowhere does Kaster expressly or inherently disclose the application of torque to an anastomosis device, much less an anastomosis device applicator having two tubes "wherein at least one of said first and second tubes is movable with respect to the other said tube to apply torque to the anastomosis device."

Thus, Kaster neither expressly nor inherently discloses each and every element claimed in amended claim 45, and Applicants believe claim 45 is in condition for allowance.

Claims 46-49 depend directly or indirectly from claim 45, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 55-58

The assignee respectfully traverses this rejection.

Claim 55 claims "[a]n anastomosis tool for use in connecting an end of a graft vessel to the side of a target vessel, the tool comprising a vessel penetrating member configured to penetrate the target vessel and configured for withdrawal outside the lumen of the graft vessel, wherein the tool is configured to penetrate the target vessel and deliver a one-piece anastomosis device to connect the graft vessel to the target vessel."

In contrast, U.S. Pat. No. 6,391,036 to Berg et. al. ("Berg") nowhere discloses a "vessel penetrating member...configured for withdrawal outside the lumen of the graft vessel." Berg discloses a head 102 that may "act as an incisor or dilator," where that head 102 is located at the distal "end of structure 100." (column 10, lines 1-16; Figure 25). The structure 100 is "an elongated tube or rod which extends axially through the connector" as well as through the lumen of the graft conduit 30. (column 9, line 67 through column 11, line 1; column 9, lines 27-29; Figure 25). The graft conduit 30 is tubular, and as a result the only way to withdraw the structure 100 and the attached head 102 from the lumen of the graft conduit 30 without tearing or destroying the graft conduit 30 is proximally through the lumen. If the head 102 were advanced away from the user, the head 102 would remain in the target vessel 50 of the patient and the structure 100 would remain in the lumen of the graft conduit 30, and the head 102 would potentially penetrate the opposite wall of the target vessel 50. (e.g., Figure 15). Such penetration would be undesirable at best. Thus, the head 102 of Berg is necessarily configured for proximal withdrawal inside the lumen of the graft conduit 30, rather than outside the lumen of the graft conduit 30.

Thus, Berg neither discloses nor suggests a “vessel penetrating member...configured for withdrawal outside the lumen of the graft vessel” as claimed in amended claim 55, and Applicants believe claim 55 is in condition for allowance. Claims 56-58 depend directly or indirectly from claim 55, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 77-81

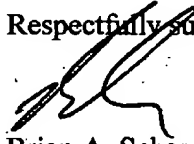
Amended claim 77 claims “[a] method of performing anastomosis between a graft vessel and a target vessel, the method comprising: providing a one-piece anastomosis device; receiving said anastomosis device on an anastomosis device applicator having a vessel penetrating member; connecting a graft vessel to said anastomosis device on said anastomosis device applicator, wherein said anastomosis device applicator is outside the lumen of the graft vessel; creating an opening in the target vessel with the vessel penetrating member of the anastomosis device applicator; advancing said anastomosis device into the penetration in the target vessel; and deploying said anastomosis device with the anastomosis device applicator to connect the graft vessel to the target vessel.”

Claim 77 requires the anastomosis device applicator to be “outside the lumen of the graft vessel” when connecting a graft vessel to an anastomosis device. In contrast, Berg discloses a structure 100 positioned within the lumen of the graft conduit 30 when the graft conduit 30 is connected to an anastomosis device having fingers 14. (column 9, lines 27-29; column 9, line 67 through column 10, line 1; Figure 25). Thus, Berg neither expressly nor inherently describes each and every element claimed in amended claim 77, and Applicants believe claim 77 is in condition for allowance. Claims 78-81 depend directly or indirectly from claim 77, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,



Brian A. Schar
Attorney for Applicants
Reg. No. 45,076
Tel. No. (650) 331-7162
Chief Patent Counsel
Cardica, Inc.